Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1997

IN RE GEORGE POPA,

Debtor.

JOHN ROUMELIOTIS,

Petitioner,

vs.

GEORGE POPA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does liability for injuries flowing from the deliberate failure of an employer to secure workers compensation insurance on behalf of an employee, in violation of statutory mandate, qualify as a nondischargeable debt under 11 U.S.C. § 523(a)(6) and this Court's decision in *Kawaauhau v. Geiger,* 523 U.S. ___, 118 S. Ct. 974 (1998)?

2. Is it consistent with Congressional intent to discharge, in bankruptcy, statutorily imposed liability for a willful violation of a statute that results in injury?

3. Did the United States Court of Appeals for the First Circuit otherwise err when it affirmed the dismissal of the employee's action against an employer for damages relating to the work-related injury sustained by the employee?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the First Circuit were:

Petitioner:	John Roumeliotis
Respondent:	George Popa

There are no other parties involved and these are the same parties who were involved in the proceedings below.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, John Roumeliotis, respectfully prays that a writ of certiorari be issued to review the judgment in this case of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The decision of the court of appeals is reported at 140 F.3d 317 (1st Cir. 1998), and is reproduced with the judgment in this Appendix at 1a-7a. The decision of the Bankruptcy Appellate Panel is reported at 214 B.R. 416 (B.A.P. 1st Cir. 1997) and is reproduced with the judgment in this Appendix at 8a-22a. The decision of the United States Bankruptcy Court (D. Mass.) was issued from the bench at a hearing on October 31, 1996 (No. 96-13296 and 96-1365). A transcript of that hearing and the bench ruling is reproduced in this Appendix at 23a-29a.

STATEMENT OF JURISDICTION

The final judgment of the court of appeals was entered on April 2, 1998. App., *infra,* 1a-2a. This Court has jurisdiction to review the judgment pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

11 U.S.C. §523(a)(6)

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--
>
> * * *
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity; ...

STATEMENT OF THE CASE

The petitioner, John Roumeliotis, was in 1984 a student studying for his doctorate degree in engineering. He was employed by Huntington Auto Service, a 24-hour gas station in a high-crime area of Boston, Massachusetts, owned by the respondent, George Popa. On November 2, 1984, at approximately 2:30 a.m., the gas station was robbed while John Roumeliotis was working, and he was severely beaten with a tire iron. Mr. Roumeliotis' skull was fractured in several places, he lost his left eye, was brain damaged and suffered severe burns over the surface of his back as well as other debilitating injuries.

Mr. Roumeliotis filed a workers compensation claim against his employer with the Massachusetts Industrial Accident Board. However, Mr. Popa had not obtained workers compensation insurance from a private

insurer as mandated by MASS. GEN. LAWS ch. 152, § 25A (1984), nor did he qualify as a self-insurer.

Mr. Roumeliotis commenced an action against Mr. Popa in the Middlesex Superior Court for the Commonwealth of Massachusetts (No. 85-00634). Among other things, he alleged that Mr. Popa was strictly liable under the Massachusetts workers' compensation laws for failing to obtain workers' compensation insurance and that Mr. Popa failed to provide adequate safety for Mr. Roumeliotis at the service station in violation of OSHA regulations.

Mr. Popa filed for Chapter 7 bankruptcy protection and Mr. Roumeliotis filed an adversary complaint. The complaint reasserted the claims and relief requested in the state action and further alleged that the violation of the workers' compensation statute was intentional and thus Mr. Popa's liability in this regard was not dischargeable in bankruptcy. Notwithstanding the pending State court proceeding and the adversary complaint, the Bankruptcy Court released Mr. Popa from all debts on August 15, 1996.

Following the Bankruptcy Court's discharge, Mr. Popa, as Debtor, filed a motion to dismiss the adversary complaint and Mr. Roumeliotis filed an opposition. After hearing oral arguments, the Bankruptcy Court denied the motion to dismiss and Mr. Roumeliotis was allowed to proceed with the State court action. Mr Popa filed a

motion for reconsideration of the Bankruptcy Court's *denial of the motion* to dismiss and Mr. Roumeliotis answered. At a hearing on the motion for reconsideration, the Bankruptcy Court granted the motion, vacated its prior order and dismissed the case. App., *infra,* at 27a.

Mr. Roumeliotis appealed and the Bankruptcy Appellate Panel affirmed the Bankruptcy Court, finding that its determination as to reconsideration was within its discretion under Federal Rule 60(b). Turning to the merits, and considering the scope of § 523(a)(6), the Bankruptcy Appellate Panel relied on *Printy v. Dean Witter Reynolds, Inc.*, 110 F.3d 853 (1st Cir. 1997), and held that "[a]n injury inflicted willfully and with malice under section 523(a)(6) is one inflicted intentionally and deliberately, and either with the intent to cause the harm complained of, or in circumstances in which the harm was certain or almost certain to result from the debtor's act." *Roumeliotis v. Popa (In re Popa),* 214 B.R. 416, 421 (B.A.P. 1st Cir. 1998). While acknowledging that Popa's failure to carry workers' compensation insurance made him criminally liable, the Bankruptcy Appellate Panel held for Popa, citing *Printy* to the effect that "failure to carry workers' compensation insurance is not deemed to be 'willful' or 'malicious' as a matter of law." *Id.* The Bankruptcy Appellate Panel also found that the action could not proceed under § 523(a)(7), and affirmed the

dismissal. *Id.* at 422.

Mr. Roumeliotis appealed to the United States Court of Appeals for the First Circuit, which affirmed the decision of the Bankruptcy Appellate Panel. *Roumeliotis v. Popa (In re Popa),* 140 F.3d 317, 318 (1st Cir. Apr. 2, 1998). The First Circuit rested its decision almost entirely upon this Court's recent opinion in *Kawaauhau v. Geiger*, 523 U.S. ____, 118 S.Ct. 974 (1998).

The First Circuit noted that this Court in *Geiger* had stated that the word "willful" in § 523(a)(6) modifies the word "injury," thus "indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to an injury." *Roumeliotis,* 140 F.3d at 318 (quoting *Geiger,* 523 U.S. at ___, 118 S. Ct. at 977). The First Circuit stated:

> It is clear in the case before us that the failure of Popa to obtain workmen's compensation insurance was an intentional act that caused injury, as were the doctor's actions in *Geiger*, but Popa's failure to obtain insurance was not done, as in *Geiger*, with the actual intent to cause injury.

Id. The First Circuit thus affirmed the Bankruptcy Appellate Panel.

REASONS FOR GRANTING THE WRIT

I. THE FIRST CIRCUIT'S DECISION CONFLICTS WITH THE DECISIONS OF OTHER FEDERAL AND STATE COURTS ON AN IMPORTANT ISSUE OF FEDERAL LAW, NAMELY, INTERPRETATION OF 11 U.S.C. § 523(A)(6).

This Court recently confirmed, in *Kawaauhau v. Geiger,* 523 U.S. ____, 118 S.Ct. 974 (1998), the dischargeability under 11 U.S.C. § 523(a)(6) of a claim arising out of a doctor's failure to obtain medical malpractice insurance. *Geiger,* 523 U.S. at ___, 118 S. Ct. at 978. As the Court specifically noted, the defendant in *Geiger* was not required by law to carry insurance. *Geiger,* 523 U.S. at ___, 118 S. Ct. at 976 n. 2. Although the *Geiger* decision clarified that issue, courts continue to conflict on the applicability of 11 U.S.C. § 523(a)(6) to situations where the debt arises from the debtor's failure to carry worker's compensation insurance as *mandated by statute.*

At least one court has held explicitly that workmen's compensation claims are property rights, damage to which can result in nondischargeable liability, presumably on a theory of common law conversion. *Vig v. Erickson (In re Erickson),* 89 B.R. 850, 852 (Bankr. D. Idaho 1988) (citing *Cook v. Cook,* 637 P.2d 799 (Idaho

1981)). At least one other court has implied the same, holding that willfully depriving employees of "the statutorily mandated protection and security of workman's compensation insurance" creates liability that is nondischargeable under § 523(a)(6). *Strauss v. Zielinski (In re Strauss),* 99 B.R. 396, 400 (Bankr. N.D. Ill. 1989) (citing *Juliano v. Holmes (In re Holmes),* 53 B.R. 268 (W.D. Penn. 1985)). These decisions conflict with others that have held that failure to procure workmen's compensation insurance is merely reckless, resulting in dischargeable debt. *See, e.g., Roumeliotis v. Popa (In re Popa),* 140 F.3d at 318. It is clear that worker's compensation statutes impose a duty on the employer, the benefits of which flow to the employee. *See, e.g.,* MASS. GEN. LAWS ch. 152.; Longshore and Harbor Worker's Compensation Act, 33 U.S.C. § 901 et seq. (1998) [hereinafter LHWCA]; *Pillsbury v. United Eng'g Co.,* 342 U.S. 197, 200 (1952) ("[The LHWCA] is a humanitarian Act...."); *Reed v. The Yaka,* 373 U.S. 410, 415 (1963) (The "dominant intent of Congress" in passing the LHWCA was to "help longshoremen.").

Furthermore, though the *Geiger* decision resulted in a relatively precise definition of "willful" to apply in § 523(a)(6) analysis, other courts have focused on the definition of "malice," raising the issue of whether an intentional violation of law demonstrates the required willfulness and malice under § 523 (a)(6).

For example, the Seventh Circuit has defined "malicious" in the context of § 523(a)(6) analysis to mean "in conscious disregard of one's duties or without just cause or excuse." *In re Thirtyacre,* 36 F.3d 697, 700 (7th Cir. 1994). Similarly, the Sixth Circuit, considering a § 523(a)(6) claim, found that "'[m]alicious' means in conscious disregard of one's duties or without just cause or excuse; it does not require ill-will or specific intent to do harm." *Wheeler v. Laudani,* 783 F.2d 610, 615 (6th Cir. 1986). One definition of malice given by Black's Dictionary is "[a] conscious violation of the law ... which operates to the prejudice of another person." BLACK'S LAW DICTIONARY 956 (6th ed. 1990). "Malice in law is not necessarily personal hate or ill will, but it is that state of mind which is reckless of law and of the legal rights of the citizen. *Id.* at 956-957.

Thus, as some courts have held, when an employer consciously disregards his statutorily imposed duty to obtain workman's compensation insurance, he is demonstrating malice in law, intentionally and knowingly depriving his employees of the statutory protections afforded them. When such an intentional violation of law results in injury, or increased injury, to an employee, the resulting liability should not be discharged, intent and malice being both manifest by virtue of the intentional violation of law. This Court, in a footnote, specifically noted that it was not addressing this issue in *Geiger,* and

as the decisions of various courts are in conflict, the issue should be settled finally by this Court.

II. THE FIRST CIRCUIT'S DECISION REGARDING DISCHARGE UNDER 11 U.S.C. § 523(a)(6) CONFLICTS WITH OTHER FEDERAL AND STATE COURT INTERPRETATIONS OF FEDERAL LAW.

The meaning of laws should be construed so as not to conflict with each other. *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer,* 515 U.S. 528, 533 (1995). Worker's compensation laws were designed to protect employees. *See, e.g., Reed,* 373 U.S. at 415 (The "dominant intent of Congress" in passing the LHWCA was to "help longshoremen."). Criminal penalties imposed on employers for failing to obtain insurance, strict liability for injuries suffered by employees and twenty-year statutes of limitations are all intended to ensure that employees have adequate protection against on-the-job injury. Moreover, they demonstrate a clear legislative intent to place the burden in such cases on the employer. When an employer intentionally disregards the legislature's mandate to obtain worker's compensation insurance, he is depriving his employees of the protections afforded them by law. By then being able to discharge his liability through bankruptcy, he is effectively rendering the protection of worker's compensation laws illusory.

Although most workers' compensation laws are

passed by state legislatures, the United States Congress has manifested a similar intent to protect employees by passing federal workers' compensation laws and empowering OSHA regulations. *See LHWCA,* 33 U.S.C. § 901 et seq.; *Crowell v. Benson,* 285 U.S. 22, 40 (1932) (recognizing purpose behind LHCWA same as state workmens' compensation laws). The greater the injury sustained by an employee, the greater the protection intended for him by federal and state legislatures. *See, e.g.,* 33 U.S.C. § 908 (granting greater rates of recovery for greater disability). However, by construing § 523(a)(6) so as to allow employers to avoid liability for failing to provide worker's compensation insurance, the opposite result is achieved. It is not employees who sustain minor injuries that are at risk. Rather, the more critical the injuries, the greater the damages, the greater the likelihood that an employer who violated the workers' compensation laws will attempt to escape liability through bankruptcy.

Such a person, who engages in illegal conduct to the detriment of others cannot be characterized as the "honest debtor" whom Congress intended to favor with the extraordinary relief of a discharge in bankruptcy. *Central Trust Co. v. Chicago Auditorium,* 240 U.S. 581, 591 (1916); *Local Loan Co. v. Hunt,* 292 U.S. 234, 244 (1934). The decision of the First Circuit in this case clearly conflicts with judicial interpretation of federal law

and the legislative intent behind § 523(a)(6). This conflict should be finally decided by this Court.

CONCLUSION

THEREFORE, Petitioner John Roumeliotis requests of this Court that it GRANT his Petition for a Writ of Certiorari to the Court United States Court of Appeals for the First Circuit.

RESPECTFULLY SUBMITTED,

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